

1 ENGROSSED HOUSE  
2 BILL NO. 1053

By: Banz and Tibbs of the House

3 and

4 Anderson of the Senate

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7 An Act relating to marriage; amending 43 O.S. 2001,  
8 Section 134, as amended by Section 11, Chapter 407,  
9 O.S.L. 2008 (43 O.S. Supp. 2008, Section 134), which  
10 relates to payments pertaining to support and  
11 division of property; providing considerations for a  
12 state court to review when determining classification  
of certain pay; excluding certain compensation from  
consideration; providing for termination of certain  
payments upon proof of certain cohabitation or  
remarriage; requiring certain briefings; and  
providing an effective date.

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 43 O.S. 2001, Section 134, as  
17 amended by Section 11, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2008,  
18 Section 134), is amended to read as follows:

19 Section 134. A. In any divorce decree which provides for  
20 periodic alimony payments, the court shall plainly state, at the  
21 time of entering the original decree, the dollar amount of all or a  
22 portion of each payment which is designated as support and the  
23 dollar amount of all or a portion of the payment which is a payment  
24 pertaining to a division of property. The court shall specify in

1 the decree that the payments pertaining to a division of property  
2 shall continue until completed. Payments pertaining to a division  
3 of property are irrevocable and not subject to subsequent  
4 modification by the court making the award, except as provided in  
5 subsection G of this section. An order for the payment of money  
6 pursuant to a divorce decree, whether designated as support or  
7 designated as pertaining to a division of property shall not be a  
8 lien against the real property of the person ordered to make such  
9 payments unless the court order specifically provides for a lien on  
10 real property. An arrearage in payments of support reduced to a  
11 judgment may be a lien against the real property of the person  
12 ordered to make such payments.

13 B. The court shall also provide in the divorce decree that upon  
14 the death or remarriage of the recipient, the payments for support,  
15 if not already accrued, shall terminate. The court shall order the  
16 judgment for the payment of support to be terminated, and the lien  
17 released upon the presentation of proper proof of death of the  
18 recipient unless a proper claim is made for any amount of past-due  
19 support payments by an executor, administrator, or heir within  
20 ninety (90) days from the date of death of the recipient. Upon  
21 proper application the court shall order payment of support  
22 terminated and the lien discharged after remarriage of the  
23 recipient, unless the recipient can make a proper showing that some  
24 amount of support is still needed and that circumstances have not

1 rendered payment of the same inequitable, provided the recipient  
2 commences an action for such determination, within ninety (90) days  
3 of the date of such remarriage.

4 C. The voluntary cohabitation of a former spouse with a member  
5 of the opposite sex shall be a ground to modify provisions of a  
6 final judgment or order for alimony as support. If voluntary  
7 cohabitation is alleged in a motion to modify the payment of  
8 support, the court shall have jurisdiction to reduce or terminate  
9 future support payments upon proof of substantial change of  
10 circumstances of either party to the divorce relating to need for  
11 support or ability to support. As used in this subsection, the term  
12 cohabitation means the dwelling together continuously and habitually  
13 of a man and a woman who are in a private conjugal relationship not  
14 solemnized as a marriage according to law, or not necessarily  
15 meeting all the standards of a common-law marriage. The petitioner  
16 shall make application for modification and shall follow  
17 notification procedures used in other divorce decree modification  
18 actions. The court that entered the divorce decree shall have  
19 jurisdiction over the modification application.

20 D. Except as otherwise provided in subsection C of this  
21 section, the provisions of any divorce decree pertaining to the  
22 payment of alimony as support may be modified upon proof of changed  
23 circumstances relating to the need for support or ability to support  
24 which are substantial and continuing so as to make the terms of the

1 decree unreasonable to either party. Modification by the court of  
2 any divorce decree pertaining to the payment of alimony as support,  
3 pursuant to the provisions of this subsection, may extend to the  
4 terms of the payments and to the total amount awarded; provided  
5 however, such modification shall only have prospective application.

6 E. Pursuant to the federal Uniformed Services Former Spouses'  
7 Protection Act, 10 U.S.C., Section 1408, a court may treat  
8 disposable retired or retainer pay payable to a military member  
9 either as property solely of the member or as property of the member  
10 and the spouse of the member. ~~If a state court determines that the~~  
11 ~~disposable retired or retainer pay of a military member is marital~~  
12 ~~property, the court shall award an amount consistent with the rank,~~  
13 ~~pay grade, and time of service of the member at the time of~~  
14 ~~separation~~ Equitable division of the military retirement or retainer  
15 pay shall include the following considerations for review by the  
16 state court in determining classification of the pay as marital or  
17 separate property:

18 1. The ability of the former spouse to provide for the former  
19 spouse's own support;

20 2. The length of service and pay grade at the time of divorce  
21 and not at the future date of retirement;

22 3. The education and experience the former spouse received  
23 during the marriage;

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1       4. Any criminal activity, abuse, or nonconformance to military  
2 lifestyle of the former spouse;

3       5. The combat service of the military member; and

4       6. Any career detriment received by the former spouse due to  
5 service of the military member.

6       F. The court shall not consider disability compensation  
7 received by a party from the United States Department of Veterans  
8 Affairs for service-related injuries for any purpose. In addition,  
9 the court shall not offset any disability income with other assets  
10 of the military member.

11       G. 1. The court shall provide in the divorce decree that  
12 payments of disposable retired pay to the former spouse shall  
13 terminate upon:

14           a. the voluntary cohabitation, as defined in subsection C  
15           of this section, with a member of the opposite sex, or

16           b. remarriage of the former spouse.

17       2. Upon application and proof of voluntary cohabitation or  
18 remarriage, the court shall modify the provisions of the final order  
19 or judgment to terminate payments as provided for in paragraph 1 of  
20 this subsection.

21       H. The Adjutant General shall ensure that all Army National  
22 Guard and Air National Guard personnel are briefed annually on the  
23 possible division of military retirement or retainer pay in a  
24 divorce action.

1        I. The provisions of ~~subsection~~ subsections D and G of this  
2 section shall have retrospective and prospective application with  
3 regards to modifications for the purpose of obtaining support or  
4 termination of payments pertaining to a division of property on  
5 divorce decrees which become final after June 26, 1981. There shall  
6 be a two-year statute of limitations, beginning on the date of the  
7 final divorce decree, for a party to apply for division of  
8 disposable retired or retainer pay for divorce decrees.

9        ~~G.~~ J. The provisions of subsections C and D of this section  
10 shall have retrospective and prospective application with regards to  
11 modifications of the provisions of a final judgment or order for  
12 alimony as support, or of a divorce decree pertaining to the payment  
13 of alimony as support, regardless of the date that the order,  
14 judgment, or decree was entered.

15        SECTION 2. This act shall become effective November 1, 2009.  
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1 Passed the House of Representatives the 19th day of February,  
2 2009.

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5 Presiding Officer of the House of  
6 Representatives

7 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2009.

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10 Presiding Officer of the Senate

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